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WALKING THE CLINICAL TIGHTROPE: EMBRACING THE ROLE OF TEACHER

JANE H. AIKEN*

The University of Maryland School of Law is celebrating thirty years of providing exceptional clinical education. Such occasions offer unique opportunities to reflect. In thirty years there has been a lot of growth and a lot of change. Some say that the change has detoured us from the ultimate goal of client service and access to justice. I say that the thirty years have changed us for the better. One thing that hasn't changed is that clinicians still have an abiding interest in dealing with social injustices and in playing a proactive role in ensuring a just society. Thirty years ago, it was a hearty band of Legal Aid attorneys who said, "OK, I'm coming into the academy; this is great. You're going to fund my public interest law practice and I'm going to have all these students and we're going to do this clinic stuff. It's going to be terrific." Things have changed. There's a new breed of clinician coming into the academy and some of us who were already here have evolved into that new breed.

Before, clinics were really just about skills training and providing service by developing future Legal Aid attorneys. We went to clinical conferences and actually studied how to do a direct examination. We didn't talk about some of the things we do now, like the effects of multi-cultural theory on our practices, our own works in progress, and learning from other disciplines to name a few. Many of us look like the law professors that we knew in law school, rather than the legal aid attorneys we now think of as our comrades. Thirty years have brought us new challenges. We now get hired like every other law professor and have to demonstrate much of the same pedigree to get the clinical job. We are publishing and face publication requirements. We feel pressure and sometimes guiltily feel enticed to teach something other than clinic. We are on committees. We go to conferences. We talk about our work. We over-commit. We try to do everything. That is the nature of our lives now. That is how we have changed.

Our aspirations for faculty status may have made us develop clinics that are driven by faculty interest rather than community interest. The more integrated we become in the traditional faculty, the

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more that is risked, in my opinion. The possibility of job security means that we do not have the turnover we had in the past. In the past, we always had new, energetic people, who knew their jobs were short-term and, therefore, were really fueling the energy for providing legal services. We have many demands on our time. Some of us live on nine-month calendars, making summers a challenge when you are representing clients. Family pressures often make us want to reduce our caseloads, reduce the faculty to student ratios, do lots of simulations, perhaps, and hire fellows or staff attorneys to do the case handling. We may choose cases that allow for writing rather than as a response to community need.

In essence, we are walking a tightrope and constantly having to deal with the tension of teaching versus doing. I want to suggest that maybe it's not undermining our roots, this business that we are doing now, the way we are behaving now. Just because we have been transformed as academics does not mean that we are somehow "less." In fact, I think in many ways we are "more." Maybe our goals have changed since the early days. Maybe these goals have changed for positive reasons and not because of the pressure of being an academic. I am not doing what I do to provide more legal services to underserved clients. That's important to me, but far less important than it was twenty or thirty years ago. Maybe it is because I have less faith in the legal system to provide justice, but I think my change in goals comes from something that is more optimistic, more hopeful.

It is not an unimportant question to ask ourselves why we do what we do. Why are we in the academy and not out in the trenches working for social justice? I take as a given that we are dedicated to social justice but it seems to me to be a waste for us to use our positions as clinical teachers merely to add a few more services, albeit good services. If all we are trying to do is "show" students what it means to work for social justice by having them work in the clinic, are we reduced to tour guides? Why not set up an elaborate externship program? We should have the courage to claim that effective teaching is critical to the clinical endeavor. We often say that clinical legal education is a far more effective means to teach students but then we run from embracing our roles as teachers. We are teachers and it is time that we proudly claim that role. Our students and our clients deserve at least that.

Clinical education has always created opportunities for law students to recognize injustice, and to appreciate the role they can play in the legal system and have an effect on justice and the delivery of

justice. We can inspire them to do just that. I believe we've been inspiring them this way for a long time, but if we can motivate them well, clinical legal education will have an even greater impact on the delivery of justice in this society, greater than if we handled more cases. We will be producing students who leave law school with a sense of both the necessity to do this work and the confidence that they can make a difference. To achieve that goal, we need to be effective teachers, not just effective doers. I do not think it is enough to give students the experience. We need to help them reflect. We need to have them look at the experience to learn much larger lessons than what they learn when they learn how to handle a particular case.

The lessons have to be larger. I do not want my students just to learn how to obtain an order of protection for a domestic violence victim. I want them to reflect on how the courts dealt with my client and how the courts respond to domestic violence. I want them to realize that their client has a lot going on in her life besides just this violence. I want them to understand how violence operates as a means of control and how little the law does about that. All of those things are really important lessons, and those insights come from reflecting, not just doing the cases, but spending some time looking at the context from which the case arises, the structures we have chosen to address these issues, and the effectiveness of the remedy.

We can do a lot of damage if we do not reflect. Students learn to "handle" the case and client, and become skilled at doing the cases. Treating these cases as individual rather than systemic problems encourages a stance of blaming the victim. If we just expose our students to injustice without addressing it explicitly, we are complicit in the desensitization that happens when we encounter injustice after injustice. Maintaining a sense of outrage is critical to the justice mission. Perhaps we become part of the problem because it is not possible to be a neutral observer of injustice. We need to name it and we have to help our students name it.

We must also be careful not to communicate futility as the students see the complexity of the problems facing our clients. We need to leave our students with a sense that they can have an effect on the world; that they can make change. If we throw them into the legal arena and we don't take the time to reflect, we risk students feeling helpless. That will reduce the number of people who work in social justice. Now, if I am going to do all of this, then I necessarily will be handling fewer cases. It's a tradeoff that I'm willing to tolerate. I think we are becoming better teachers. I think we embrace this role

now, and we can write and reflect on it and share that information with others. By not taking our role seriously, we miss opportunities to become more effective. Steven Wizner has said that we need to “nurture [each] student’s capacity for moral indignation at injustice in the world.”¹ Now such nurturing takes time and it takes skill, not lawyering skill but teaching skill. What it means to be a grown-up clinician is to have an appreciation for both doing and teaching.

As clinicians, we can help our students reflect on their work, not just on developing effective lawyering skills but also in larger ways. We often talk about reflective learning but we haven’t examined how to utilize reflection to maximize each student’s awareness of social justice issues. Our goal for our students should be to develop a deep understanding of what it means to represent a client, how one approaches real legal problems and, especially, how the legal system often fails the poor and disenfranchised. Their work in the clinic should result in an appreciation of the role they can play in providing access to justice. In order to achieve reflective learning, we must engage in reflective teaching. As long as we are ambivalent about our role, we limit our ability to be more intentional about our teaching. I would love to have discussions with fellow clinicians about what cases provide the greatest insight into social justice. What teaching methods are the best for teaching goals? How do we promote critical reflection on the part of the students? What teacher interventions are the most effective? What legal events are most likely to inspire insight? How important is student responsibility for the cases? How important is it that they see varied kinds of cases? How much client contact is optimum? How do we know if our methods work?

Teaching critical reflection is important for our students and for ourselves. We need to confront the hard questions. Are we really making certain choices because they are easier, or do they really promote our mission of educating students concerned about social justice? Are we serving our clients, or are our clients serving us? Are we working on improving our teaching and checking to see if it is effective? Are we making the best use of our privileged positions in the academy to challenge practices that the practicing bar is just not in a position to do? Are we filling those gaps where public funding has failed our clients? Are we bringing new-found status as law professors to policy making in the law school and the community? Are we being

1. Stephen Wizner, *Beyond Skills Training*, 7 CLINICAL L. REV. 327, 330 (2001).

intentional about the next thirty years? Where do we see ourselves? Where are we going, and will we be satisfied with that?

We can also affect the “justice mission” of law schools by influencing what happens outside of our clinics. Ironically, as clinicians have become more integrated into the traditional law school, we’ve also had more power to influence where the curriculum goes and how that curriculum incorporates more experiential opportunities for the students. The University of Maryland is a shining example of this. Its roots are deeply set in an understanding about the role of law schools in producing social justice by training its students. The Cardin Program grew out of that belief.² In fact, from what I understand, when the Cardin Program came into being, the bar recognized the need to train students to do work in public service, partially to teach students the sense of professional responsibility to provide service to the underserved and to work toward social justice. We can communicate to students that providing legal services to the underserved is important because clinical education is treated as important in the law school and not marginalized. It is as important as taking your contracts class.

Maryland’s clinics are a model for promoting access to justice through lawyering and teaching. Maryland has a history of hard-money funding for their clinics. It has long recognized the benefits of having a more integrated tenure track and approach to clinical and non-clinical teaching. Brenda Blom says that the essence of clinical education is linking theory and practice,³ and the University of Maryland has always been on the cutting edge. Maryland was one of the first to have an interdisciplinary clinic, before that became really fashionable. Maryland has been functioning as a laboratory for new ways to provide legal services. The clinic won an award—the ABA Louis Brown Access to Justice Award—because of that innovative laboratory. By embracing the importance of teaching, Maryland has also successfully walked the tightrope. The University of Maryland offers clinics that fill gaps. From what I can see, the choices that are being made are really driven by finding places where students have a pedagogical opportunity *and* a chance to do something that no one else is doing, either because it will not be funded or because people have not even thought about doing it. Maryland clinics are developing

2. See University of Maryland School of Law, *The Cardin Requirement*, at http://www.law.umaryland.edu/aboutus/cardin_req.asp.

3. See Brenda Bratton Blom, *Finding Your Balance on the Tightrope: Reflections from a Clinical Life*, 4 U. OF MD. L.J. OF RACE, RELIGION, GENDER & CLASS 273 (2004).

communities, providing counsel at the critical stage of bail, reintegrating ex-felons, addressing drug policy and public health strategies, organizing workers, attacking predatory lending, doing tobacco control, challenging welfare reform, supporting and advocating on behalf of youth and the elderly and the environment; it just goes on and on. Now these are areas in which public interest lawyers are either too busy to focus or can not afford to do the work. All of these clinics are possible because, at the University of Maryland School of Law, the faculty are academics and take that role seriously.

Maryland's Law School has recognized that it is through doing that students open themselves to real learning about social justice. It is through teaching that we help our students appreciate the broader lessons about power and privilege and about their role in bringing about or inhibiting social justice. Students feel the fear, vulnerability and the reliance of their clients inspiring them to strive to be effective lawyers with excellent skills. That happens because it is real. We need to be there when our students make these kinds of observations; we need to be there when they recognize vulnerability and feel their own vulnerability, their own fear. And we need to help them reflect on that experience and hone their skills and examine their values. Therefore, we need to resist the pressures that make teaching and doing mutually exclusive. If we do not resist, we will lose the soul of clinical education.